PD Law

BUYING REAL ESTATE IN QUEENSLAND

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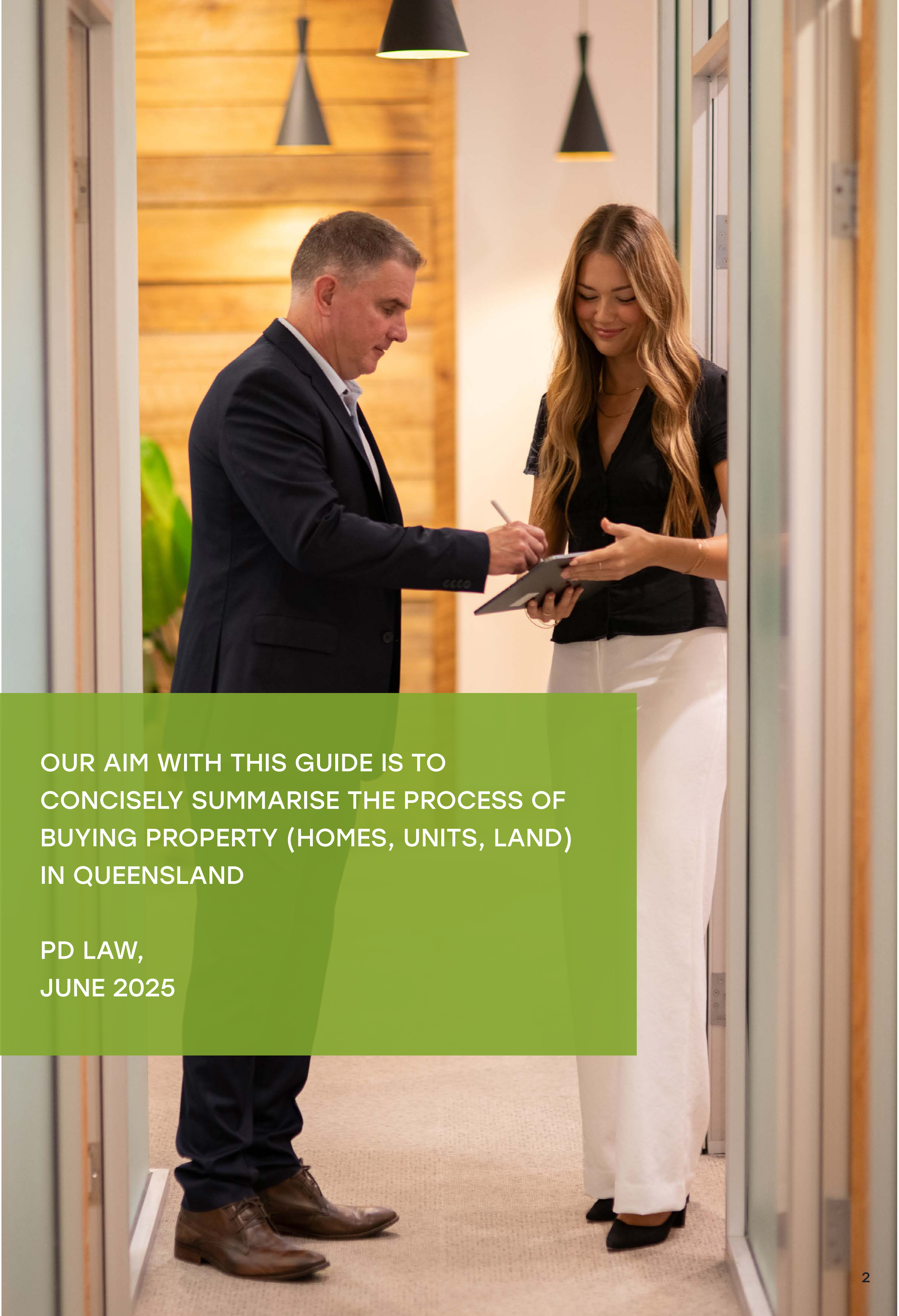

OUR AIM WITH THIS GUIDE IS TO CONCISELY SUMMARISE THE PROCESS OF BUYING PROPERTY (HOMES, UNITS, LAND) IN QUEENSLAND

PD LAW,
JUNE 2025

PUTTING FIRST THINGS FIRST

Why and what you're buying is your business…

… but protecting your contractual rights is ours.

As your lawyers, we won't ask what drew you to a particular property. We will however make sure you're aware of your obligations and rights, who should buy it, and what you need to do every step of the way.

It's been said that buying real estate is one of the most important decisions in our lives. This remains the case. Whether you're buying your first home to live in, buying to invest, or buying strategically as part of a business venture, it is entirely a matter for you.

So why are you buying? All we can say is take your time, make sure you have been thorough with what the market has to offer, and how much you can afford to spend.

We'll assume in this guide that you have done just that: you've settled on the property you want to own, and now you want to make it happen.

Here are the typical steps involved:
- ✓ Negotiation
- ✓ Contract signing
- ✓ The searches and document preparation
- ✓ Settlement

Negotiation 101- be clear.

We're not talking about hard-nosed wheeling and dealing here, but rather making sure that buyer and seller are 'on the same page'.

More often than not, lawyers don't get to see contracts or even meet buyers until a contract is signed. When we start to ask buyers about their desired outcomes, it sometimes unearths a reason that was never anticipated by the agent or the seller, and the resultant condition (or lack of condition) may send the deal off in the wrong direction.

So, the rule here is: be clear with the seller or their agent. If you want something included in the contract, ask for it. If you want something removed from a property before you settle, ask for it.

Never assume the seller, or the agent, knows what your intentions are. For instance, if you assume that something is 'automatically included' and it is not there at settlement, you'll be disappointed, and the contract may not give you any relief.

Signing up – why must you pay the deposit now?

Once you have settled on your property, and negotiated the deal, with legal advice where necessary, the next step in the process is to sign your contract.

Typically buyers are required to make a written offer to a seller by presenting a signed contract accompanied by the deposit.

The deposit is part of the purchase price, paid to the seller's agent's trust account (or seller's solicitor's trust account) at the start of a transaction. Amongst other things, it is a sign of a buyer's intention to be bound to enter into the contract, and lets a seller know the buyer is serious.

Sometimes deposits are split into two or more payments, usually with a nominal amount (say $1,000.00) on signing of a contract, with the balance of up to 10% of the purchase price payable when a contract goes 'unconditional'. Subject to the specific contract terms, 'unconditional' usually means when a buyer's finance application has been approved, and they have obtained satisfactory reports regarding any pest and building inspections undertaken.

The deposit remains safe in the agent's or lawyer's regulated trust account until settlement occurs, when it is paid to the seller along with the balance purchase price. If a buyer defaults, enabling the seller to terminate, the deposit can in certain circumstances be forfeited by the seller. We'll advise you on how this can be avoided.

COLD FEET

WHEN ARE YOU BOUND

The law in Queensland gives you a 5 working day cooling off period, starting on the day that you or we receive your contract, signed, enabling you to terminate the contract for no reason, and have your deposit returned.

The seller can claim a 0.25% penalty (usually deducted from the deposit) if you do exercise your right to terminate under the cooling off provisions.

INSURANCE & RISK

The property is at your risk 24 hours after the contract date, so it is critical that you talk to your broker about putting some insurance cover in place immediately. Although the seller has to take reasonable care of the property between contract date and settlement, you cannot force them to repair any accidental damage between the contract date and settlement date.

FINANCE

Brokers, banks and us

Most of us have to borrow money from a bank to buy real estate. As usual as this is, it can also result in considerable difficulty if your bank, broker and lawyer are not all working together. Although we are not engaged to advise on the terms of your loan, we need to know that you have your finance approved, and that your bank will be ready to settle on the day of settlement, because time is critical, and delays can be costly or even terminal to contracts.

So how much do you need to borrow? A rough calculation on the back of a napkin won't cut it. You need to know, exactly how much you have of your own money to spend, how much your buy in costs are (eg legal fees, searches costs, stamp duty) and how much your bank fees and charges are before you can make an informed decision about telling us whether your finance is approved.

Trouble free finance

In our experience, first time buyers frequently underestimate just how much they'll need to settle.

The consequences of getting it wrong range from a last minute hassle at settlement to find the shortfall (best case), or a terminated contract, lost deposit and a law suit for damages (worst case).

Our tips for trouble free financing are:

- ✓ Don't leave it too late – your broker or bank will need a lot of information from you and only you can provide it
- ✓ Authorise them to talk to us – tell you bank or broker that we're looking after your transaction so that they can keep us informed as to the availability (and amount) of funds at settlement

Don't get caught short – make sure you have more than enough money to cover the price, the deposit, any adjustments necessary for rates and body corporate levies (if these apply) your legal costs, bank costs and government charges. We will give you a comprehensive quote setting out your legal costs.

GOOD BONES

BUILDING & PEST INSPECTION REPORTS

Almost invariably, buyers want some assurances that the physical construction of the property is sound, in terms of both structural integrity and also of risk of white ant infestation.

The contract enables you to have these two aspects checked by licensed professionals, and if you are not happy with the results, acting reasonably, you can cancel the contract and have your deposit returned.

For good reason, most sellers want to limit buyers' rights to terminate contracts on this basis. Often contracts contain conditions stating that a buyer can only terminate if they find damage exceeding a certain minimum value, or evidence of live termite activity in the dwelling itself. Make sure you check any limiting conditions and make sure you're satisfied.

WHAT IF THERE ARE PROBLEMS

Contrary to popular belief, you're not automatically entitled to a reduction in your purchase price, but it may be something that you can try to negotiate. Ultimately, your only right under the contract though is to terminate.

WHAT THEY DON'T COVER

Building and pest inspections have nothing to do with the lawfulness of any structures, such as the existence of a granny flat downstairs, or a car port off the side of a house.

These can only be checked by inspecting council's building records, and having a council inspector inspect the improvements on the property.

The contract is not ordinarily subject to this check so if this is something you want to be sure of before committing to the purchase, make sure you ask the agent or us to include a special condition to cover this.

Slippery slopes

Although this does not form part of the scope of our work, we think buyers ought to be aware of these potential hidden costs before they commit.

Obtaining a building approval is not a simple process when buying sloping land. Before council will consider a building application on land with a slope of greater than 15%, or about 8 degrees (or a grade of about 1:6) you may need to submit a material change of use application to council and require a slope stability report from a qualified geotechnical engineer. These can be very expensive and time consuming, so make sure you ask your designer, builder or engineer for some information and guidance on this issue to avoid unforeseen expense and delay later.

Design guidelines

(Aka: architectural codes, design covenants, building and design standards, building covenants etc).

Almost always, developers include a set of conditions stipulating how they would like lot owners in their estate to build their homes. The logic behind these is to minimise the risk of some lot owners attempting to construct low quality, low value improvements that, when complete, might detract from the overall aesthetic appearance of the estate.

If they form part of your contract, they're a binding agreement between you and the person from whom you're buying the land.

If they do apply, it's wise to get a copy to your builder or designer so they can work these standards into their design to minimise the risk of the developer calling on you to make good any shortfalls.

Later, if you sell before building, make sure you attach a copy of those guidelines to your sale contract to avoid being blamed by and held accountable to the developer for any subsequent buyer's failure to follow those guidelines.

Section 97A covenants

Not to be confused with design guidelines discussed earlier, S 97A covenants are conditions imposed by local and state government authorities, restricting the use of land in certain circumstances. These covenants are registered on the title to the land under S 97A of the Land Title Act and bind all owners of that land, regardless of what the contract states.

The most common S97a covenants registered on land in this region are for:

- ✓ Protection of native flora and fauna
- ✓ Establishing bushfire control zones
- ✓ Erosion control and management

The existence of these on title can limit the available area for construction and associated uses like waste water treatment in rural settings so it's wise to understand where they are and what they're for before proceeding to buy or build.

Easements

Like S 97A covenants, easements are generally registered on title and remain binding on the owner. They typically provide neighbouring properties (or a statutory authority like council) with a right of access over, or provision of services through part of a person's land.

These can also have a limiting effect on the availability of 'buildable' land so it would pay to know this before you are committed.

NB: Some easements aren't registered and can't be established through title and plan searches, but exist because of legislation allowing them. For example, the local council has approved subdivisions in the past with sewer mains running through lot owners' properties, provided that they are within 1.5 metres of the boundary to their property. The only way to find this out is either to inspect council's records, or physically inspect the property looking for infrastructure such as manhole covers to ascertain their location relative to a boundary.

IT'S ALL IN THE NAME

Who should the buyer be?

Typically, first home buyers and owner occupiers will want to buy in their own names for stamp duty concession purposes, while investors should first take financial and legal advice as to what the best structure is for them, having regard to their circumstances, their risk profile, and their taxation position. To try to switch buyer names and entities mid-transaction can be very costly or impossible so it's important that this is considered carefully and settled before you go to contract.

BUYING OFF THE PLAN

What's it mean?

More an industry term than a legal one, it refers to all types of units and land being offered for sale before legal title actually exists.

These contracts are generally hybrid versions created by developers' lawyers and therefore differ from development to development. Common conditions include

- A minimum number of pre-sales before a developer will commit to proceeding
- obtaining necessary development approvals on terms acceptable to the developer

Depending on the product being offered, buyers are usually given a great deal of disclosure material enabling them to see the finished product ought to look like.

Settlement will occur within a set time after the developer finishes the development to the relevant authority's requirements and procures title to the lots, usually 14 days. Settlement must occur within a maximum time frame usually up to 3.5 years after the contact date, failing which either party may terminate. This is usually called the Sunset Date.

Pitfalls

Is what you see what you get? When buying an existing house or unit, you have the ability to inspect and see for yourself what you are buying. When buying off the plan, this is impossible and all you can go by are proposed site plans and designs, lot plans, floor layouts and a schedule of finishes. If the end result is not what you bargained for, the 'fix' could be costly or impossible.

Finance approval lapses: most finance approvals last for up to 90 days. If the settlement date occurs after this, buyers may have to re-apply. Depending on their circumstances, they may not get their finance approved a second time. Worse still, they may have already given notice that their finance was approved the first time round, leaving them bound to an unconditional contract

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Benefits

A major attraction for buying off the plan is that you don't need to come up with the money immediately, but rather only when the project is complete and this can be anywhere from a few months to a few years.

As such you can lock in a property at today's prices, and pay for it later. This is especially beneficial when there is a strong rising property market.

Selling before you settle – high risk and little reward

This was a very common method in the most recent property boom for some speculators trying to capitalise on a rising property market, whereby they sign a contract with no intention of settling, but rather finding a buyer to sell to at a higher price, and keeping the profit, or uplift. This is risky, and may not be as profitable as it would first appear. For instance:

- **Tax** – any uplift or profit will be subject to capital gains or income tax at marginal rates
- **Agent's commission** – if an agent was involved in the re-sale, then you may be liable to pay their commission
- **Stamp duty** – unless you bought under an option, you may be liable to pay stamp duty on your transaction, regardless of the fact that you may only own the property for a moment in time
- **Binding contract** – you remain bound under your contract, so if your buyer fails to complete, the developer may still hold you to your obligations under your contract.

SPECIAL CONDITIONS

WHAT ARE THEY FOR?

Everyone's circumstances are different, and contracts can and often are drafted to suit. It's important to talk to the seller or the agent and carefully state how you want, or need, the transaction to work, and we can do the rest.

Special conditions can include virtually anything that a buyer and seller are happy to agree on. Here are some common topics:

- ✓ Subject to the sale of another property
- ✓ Subject to certain works being done first
- ✓ Subject to Council approving all improvements being made to the property
- ✓ Subject to a buyer conducting due diligence on the development capability of the land
- ✓ Subject to amendment of body corporate by-laws to enable a buyer to keep a cat in their unit
- ✓ Subject to Foreign Investment Review Board approval
- ✓ Subject to granting of early possession to enable buyer to move in before paying for property
- ✓ Subject to seller cleaning up land to buyer's absolute discretion
- ✓ Subject to registration of an easement enabling use of neighbouring property
- ✓ Subject to termination of a tenancy.

All special conditions need to be carefully drafted to ensure they provide a clear result in any circumstances.

LAST WORDS

Don’t worry

People think they will be charged the very moment they call a lawyer. Although that may be the case in some firms, it’s not here. We’d much rather hear from you beforehand, when we have time to make suggestions, rather than afterwards, when it may be too late, or more expensive to try to fix. When compared to a few days holiday, or having your car serviced, or the cost of a tradesman for a day, the value for money in one of the most important transactions of your life, and peace of mind in engaging PDL is exceptional.

With literally decades of experience, we know what we’re doing and we’re professional.

So benefit from our experience.

ABOUT PDLAW

PD LAW is a dynamic, progressive law firm offering a broad range of business and personal legal services.

We’re dedicated to ensuring:

- ✓ Our service is prompt
- ✓ Our advice is clear, straight forward and represents excellent value; and
- ✓ You’re a client of ours for life.

We look forward to working with you.

Disclaimer: this article is intended as a general guide only. Readers are advised to take specific advice before relying on anything stated herein.

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